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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 09/577,257
Filing Date: May 22, 2000
Appellant(s): CHANEY, JEREMY

James F. Herkenhoff (reg. 20,995)
For Appellant

EXAMINER'S ANSWER

This is a supplemental response to the APPEAL BRIEF filed 6-23-2005, and the ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER filed 3-13-2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,356,971	KATZ ET AL.	3-2002
6,148,346	HANSON	11-2000
6,377,530	BURROWS	4-2002

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 3, 4, 6, 8, 9, 11, 13, 14, 16, 17, 21-32, 35-38, and 46-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,356,971 (Katz et al.) and U.S. Patent No. 6,148,346 Hanson.

Referring to claims 1, 6, 11, 35, 46, and 49, Katz discloses in column 6: lines 1-4 and Figures 4A-4D a music player that displays a graphical interface comprising information about music items. In column 3: lines 9-14, Katz discloses that the music player comprises device driver interfaces for "changers" or "jukeboxes" i.e. music renderers. Katz's graphical user interface (220) comprises numerous control objects for managing music items (see Figures 4A-4D) and an application programming interface that enables device drivers to modify the music player's graphical user interface (see column 4: lines 58-62), but Katz fails to specifically disclose that the control objects are provided via the device driver interface or application programming interface. Hanson, though, discloses a dynamic device driver for a peripheral device that is capable of delivering control objects to an application. In column 2: lines 1 1-19, Hanson discloses a peripheral device that is connected to a host computer. In column 2: lines 40-44,

Hanson explains that said peripheral device could be an audio component. In column 2: lines 45-50, Hanson further explains that the peripheral's device driver includes a graphical interface for handling user-initiated controlling commands and for displaying the status of the peripheral device as well as a list of predefined user-selectable options related to the peripheral device. Hanson still further explains in column 5: lines 13-22 that the graphical interface objects provided by the peripheral device driver can be incorporated into the menus of the application software running on the host computer. In column 8: lines 12-27, Hanson discloses one example in which the graphical interface objects are loaded and displayed in response to a menu selection of the peripheral from within the application software. Based on these teachings, it should be clear that Hanson discloses a superior method of using peripheral device drivers to provide peripheral specific graphical control objects to corresponding applications. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use Hanson's teachings in combination with the music player disclosed by Katz. There are numerous types of music renderers that Katz's music player software may not have been designed to accommodate. Hanson's dynamic device driver advantageously provides' the user a way to manipulate peripheral specific data objects as suggested in column 4: lines 55-57, and would thus allow Katz's music player to be compatible with an unlimited number of devices in the vast market of music renderers.

Referring to claims 3, 8, and 13, Hanson explains in column 2: lines 45-50 that the graphical interface provided by the peripheral device driver could include a list of user-selectable options.

Referring to claims 4, 9, and 14, Katz discloses in Figure 4A numerous controls for managing music items, and specifically discloses controls for playing the music items.

Referring to claims 16 and 17, as discussed above, Katz discloses a music player that displays a graphical interface comprising information about a plurality of music items, wherein the graphical interface comprises one or more control objects that are operative to be used by a user to control the operation of a music renderer that is configured to play the music items. Said control objects must initially be named by the music player. Katz, however, fails to disclose that the device driver for the music renderer can rename one or more of the control objects. Hanson, though, discloses in column 5: lines 14-17 that device drivers can incorporate GUI objects into the menus of certain application software. Since a menu is a type of control object, Hanson's invention effectively uses a device driver to rename control objects within an application. Doing so is beneficial because it incorporates important peripheral specific controls directly into the graphical user interface of the application software. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a device driver to rename a control object as taught by Hanson in combination with the music player of Katz. Again, there are numerous types of music renderers that Katz's music player software may not have been designed to accommodate. Hanson's

device driver advantageously provides the user a way to manipulate peripheral specific control objects as suggested in column 4: lines 55-57, and would thus allow Katz's music player to be compatible with an unlimited number of devices in the vast market of music renderers.

Referring to claims 21, 24, 27, 30, and 37, Katz discloses in column 4: lines 42-54 that the music player executes on a computer.

Referring to claims 22, 23, 25, 26, 28, 29, 31, 32, 38, 47, and 48, Hanson discloses in column 2: lines 40-44, that the peripheral device controlled by the dmamic device driver could component. Accordingly, Hanson's disclosure anticipates the use of portable M133 players and optical disk burning devices, both of which are audio components.

Referring to claim 36, Hanson discloses in column 5: lines 13-43 that the graphical interface control objects could be buttons.

Claims 5, 10, 15, 39-42, and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,356,971 (Katz et a1), U.S. Patent No. 6,148,346 (Hanson), and U.S. Patent No. 6,377,530 (Burrows).

Referring to claims 5, 10, and 15, Katz and Hanson fail to disclose that the event comprises a request to transfer a music item from the computer to a portable music player device. Burrows, though, teaches in column 4: line 35 through column 5: line 5 a portable music player device that is controllable by a computer interface. Specifically, Burrows explains in this section that the host computer can replace or update the table

of contents, add music items, and delete music items. To perform any of these operations the host computer must inherently display some sort of graphical interface that allows the user to properly manage the music items. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to display a graphical interface in response to a request to transfer a music item âom a computer to a portable music player device as suggested by Burrows in combination with the teachings of Katz and Hanson because portable music player users require a convenient and user-friendly mechanism for transferring music items.

Referring to claim 39, as discussed above, Katz and Hanson disclose executing a music player that displays a graphical interface comprising information about music items. Katz and Hanson further suggest displaying a graphical interface for managing the content of a portable music player device in response to an event and assigning an object in the graphical interface with a device driver of the portable music player (see rejections above). Katz and Hanson fail to disclose, however, that the event is a request to transfer a music item from the computer to the portable music player device. Burrows, though, teaches in column 4: line 35 through column 5: line 5 a portable music player device that is controllable by a computer interface. Specifically, Burrows explains in this section that the host computer can replace or update the table of contents, add music items, and delete music items. To perform any of these operations the host computer must inherently display some sort of graphical interface that allows the user to properly manage the music items. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to display a graphical

interface in response to a request to transfer a music item from a computer to a portable music player device as suggested by Burrows in combination with the teachings of Katz and Hanson because portable music player users require a convenient and user-friendly mechanism for transferring music items.

Referring to claim 40, the examiner submits that a graphical interface for use with Burrows' invention must include an import window so that the user can select which files are to be moved.

Referring to claim 41, the examiner submits that a graphical interface for use with Burrows' invention must further include a selector for initiating transfer of at least one music item to the portable music player device.

Referring to claim 42, as mentioned above, Burrows discloses transferring music files from a computer to a portable music player device in column 5: lines 1-5.

Referring to claim 45, Katz discloses in Figure 4A controls for initiating playback of music files from a connected CD playing device. Accordingly, these same controls could be used to initiate playback of music files on any connected audio device such as a portable music player device.

(10) Response to Argument

Claims 1, 6, 11, 35, and 46:

With respect to the arguments directed at the group of claims including Claims 1, 6, 11, 35, and 46 the Appellant's arguments are focused on the limitations regarding the

existence of a device driver interface, in the cited references. More specifically, as stated from representative Claim 1, the limitation argued is:

> *"a device driver interface; executing a device driver, related to a music renderer, that indicates a change to the display of the music player's graphical user interface; and providing via the device driver interface a control object for managing music items."*

Since the interpretation of the limitation is the basis for the arguments, the Examiner's interpretation is now given. The claim, as interpreted by the examiner, pertains to a graphical user interface (GUI) interfacing with a device driver interface (not necessarily displayed) that incites a change in the GUI. As stated in the eighth paragraph of MPEP 2101[R2].II.C.,

> "*Office personnel are to give claims their broadest reasonable interpretation in light of the supporting disclosure.* In re Morris, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023,1027-28 (Fed. Cir. 1997)."

Based on the interpretation of the claim limitations being argued, the Examiner will now explain how the teachings of the Katz and Hanson references are within the scope of these limitations.

Katz discloses in column 6: lines 1-4 and Figures 4A-4D a music player that displays a graphical interface comprising information about music items. In column 3: lines 9-14, Katz discloses that the music player comprises device driver interfaces for

"changers" or "jukeboxes" i.e. music renderers. Katz's graphical user interface (220) comprises numerous control objects for managing music items (see Figures 4A-4D) and an application programming interface that enables device drivers to modify the music player's graphical user interface (see column 4: lines 58-62), but Katz fails to specifically disclose that the control objects are provided via the device driver interface or application programming interface. Hanson, though, discloses a dynamic device driver for a peripheral device that is capable of delivering control objects to an application. In column 2: lines 11-19, Hanson discloses a peripheral device that is connected to a host computer. In column 2: lines 40-44, Hanson explains that said peripheral device could be an audio component. In column 2: lines 45-50, Hanson further explains that the peripheral's device driver includes a graphical interface for handling user-initiated controlling commands and for displaying the status of the peripheral device as well as a list of predefined user-selectable options related to the peripheral device. Hanson still further explains in column 5: lines 13-22 that the graphical interface objects provided by the peripheral device driver can be incorporated into the menus of the application software running on the host computer. In column 8: lines 12-27, Hanson discloses one example in which the graphical interface objects are loaded and displayed in response to a menu selection of the peripheral from within the application software. Based on these teachings, it should be clear that Hanson discloses a superior method of using peripheral device drivers to provide peripheral specific graphical control objects to corresponding applications. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use Hanson's teachings of a

dynamic device driver for audio/video components (see column 2, lines 4-44) in combination with the music player disclosed by Katz. There are numerous types of music renderers that Katz's music player software may not have been designed to accommodate. Hanson's dynamic device driver advantageously provides' the user a way to manipulate peripheral specific data objects as suggested in column 4: lines 55-57, and would thus allow Katz's music player to be compatible with an unlimited number of devices in the vast market of music renderers.

The examiner will now address the individual arguments and statements made by Appellant.

From page 8 of the Appeal Brief, from the fourth paragraph, the Appellant argues that "Hanson fails to teach or suggest a device driver interface as is claimed".

The examiner respectfully contends that Hanson does teach this device driver interface, in column 4, lines 20-57, where he teaches a dynamic device driver containing both an OS specific device driver portion and an OS independent device driver portion, the OS independent device driver portion interfacing with the GUI either locally at the host computer system or through a local area network. The OS independent device driver portion includes information regarding peripheral device operation, peripheral specific data objects, and GUI objects. The GUI objects being

supplied as a means for the user to interface with the device driver and in turn the device.

From page 9 of the Appeal Brief, from the fourth paragraph, the Appellant argues that "Hanson fails to teach or suggest that control objects can be transmitted via a device driver interface from a device driver to an application".

The examiner respectfully contends that Hanson does teach, in column 4, line 45 through column 5, line 22, the GUI objects of the OS independent device driver being displayed in menus of the application software running on the operating system.

From page 9 of the Appeal Brief, from the fifth paragraph, the Appellant argues that "Hanson fails to teach or suggest an application provide a device driver interface for controlling its graphical user interface".

The examiner respectfully contends that Hanson does teach, in column 4, line 45 through column 5, line 22, the GUI objects supplied OS independent device driver being displayed in menus of the application software running on the operating system. These menus being for use in operating the peripheral device.

From page 10 of the Appeal Brief, from the second paragraph, the Appellant argues that "In Hanson, it appears that the only graphical user interfaces that are displayed by the device driver are its own, i.e., it does not transmit control object from

the device driver to another application or vice-versa".. and that "this does not provide seamless integration of the controls of the device driver with an application".

The examiner respectfully contends that Hanson does teach, in column 5, lines 12-22, the GUI objects of the OS independent device driver being displayed in menus of the application software running on the operating system. Where the display is an integrated display containing both items from the OS and items that are added via the interface with the OS independent device driver.

From page 10 of the Appeal Brief, from the third paragraph, the Appellant argues that there is insufficient motivation to combine Katz and Hanson to support a prima facie showing of obviousness.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the examiner respectfully contends that it would have been obvious to one of ordinary skill in the art at the time the invention was made to use Hanson's teaching of a dynamic device driver in combination with the music player disclosed by Katz. There are numerous types of music renderers that Katz's music player software may not have been designed to

accommodate. Hanson's dynamic device driver advantageously provides the user a way to manipulate peripheral specific data objects as suggested in column 4: lines 55-57, and would thus allow Katz's music player to be compatible with an unlimited number of devices in the vast market of music renderers. Furthermore Hanson specifically teaches the use of its dynamic device driver for interfacing with home appliances such as audio/video components (see column 2, lines 40-44).

Claims 16 and 17:

With respect to the arguments directed at the group of claims including Claims 16 and 17 the Appellant's arguments are focused on the limitations regarding the existence of a device driver interface, in the cited references. More specifically, as stated from representative Claim 16, the limitation argued is:

> *"naming using the music player a control object, and receiving a request for a device driver for the music renderer to change a name for the control object."*

Since the interpretation of the limitation is the basis for the arguments, the Examiner's interpretation is now given. The claim, as interpreted by the examiner, pertains to a naming an item by the music player (an old naming) and a renaming in response to a request from the device driver (such as the name for a different device being selected). As stated in the eighth paragraph of MPEP 2101[R2].II.C.,

"*Office personnel are to give claims their broadest reasonable interpretation in light of the supporting disclosure.* In re Morris, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023,1027-28 (Fed. Cir. 1997)."

Based on the interpretation of the claim limitations being argued, the Examiner will now explain how the teachings of the Katz and Hanson references are within the scope of these limitations.

From page 12 of the Appeal Brief, from the third paragraph, the Appellant argues that Hanson fails to allow a device driver to rename it.

The examiner respectfully contends that menus can display a specific set of GUI objects for each specific peripheral device. Should one device be left on the display a new device be selected for use the OS independent portion will supply an instruction to rename the items in the menu to concur with the currently selected peripheral device (see column 5, lines 12-43).

From page 12 of the Appeal Brief, from the third paragraph, the Appellant argues that "The examiner has failed to particularly identify how control objects of Hanson would initially be named by the application".

The examiner respectfully contends that the prior art selection of a printer to use from the "available printers" display would give the initial selection, providing its own distinct displayed menus (see column 5, lines 12-43).

Claims 4, 5, 10, 15, 39-42, and 45:

With respect to the arguments directed at the group of claims including Claims 4, 5, 10, 15, 39-42, and 45 the Appellant's arguments are focused on the limitations regarding the combination of the three references teaching the subject matter argued above.

From page 13 of the Appeal Brief, from the first paragraph, the Appellant argues that there is insufficient motivation to combine Katz and Hanson to support a prima facie showing of obviousness.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the examiner respectfully contends that it would have been obvious to one of ordinary skill in the art at the time the invention was made to use Hanson's teaching of a dynamic device driver in combination with the music player disclosed by Katz. There are numerous types of music renderers that Katz's music player software may not have been designed to

accommodate. Hanson's dynamic device driver advantageously provides' the user a way to manipulate peripheral specific data objects as suggested in column 4: lines 55-57, and would thus allow Katz's music player to be compatible with an unlimited number of devices in the vast market of music renderers. Furthermore Hanson specifically teaches the use of its dynamic device driver for interfacing with home appliance such as audio/video components (see column 2, lines 40-44). It further would have been obvious to one of ordinary skill in the art at the time the invention was made to display a graphical interface in response to a request to transfer a music item from a computer to a portable music player device as suggested by Burrows in combination with the teachings of Katz and Hanson because portable music player users require a convenient and user-friendly mechanism for transferring music items to the destination device. This is further similar to the way documents of the Hanson reference are transferred between the operating system and the peripheral.

Claim 41:

With respect to the arguments directed at the group of claims including Claim 41 the Appellant's arguments are focused on the limitations regarding the use of a "selector for initiating transfer of at least one music item to the portable music player."

From page 14 of the Appeal Brief, from the first paragraph, the Appellant argues that the Examiner wholly fails to show where a "selector for initiating transfer of at least one music item to the portable music player" is taught by Burrows.

In response to applicant's argument the examiner respectfully submits that Burrows teaches a display for use in the selection of song based data on a portable audio device, where the portable audio device is capable of downloading compressed audio from a computer, specifically when selection is made to turn the device on (see column 3, lines 56-65 and column 4, line 22 through column 5, line 5).

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Conferees:

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September 26, 2005

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